

## STATEMENT OF CONSIDERATION RELATING TO

401 KAR 11:001, 401 KAR 11:010, 401 KAR 11:020, 401 KAR 11:030, 401 KAR 11:050, and  
401 KAR 11:060

“Amended After Comments”

Energy and Environment Cabinet  
Department for Environmental Protection  
Division of Compliance Assistance

**I** A public hearing on 401 KAR 11:001, 401 KAR 11:010, 401 KAR 11:020, 401 KAR 11:030, 401 KAR 11:050, and 401 KAR 11:060 was held on August 21, 2008, at 6:30 pm at the Capitol Annex, Room 149, 702 Capitol Avenue, Frankfort, Kentucky.

**II** The following people attended this public hearing or submitted written or oral comments:

Attended public hearing:

<u>Name and Title</u>	<u>Affiliation</u>
Barry Elmore, PE	Division of Water
Abigail Rains, Env. Scientist	Division of Water
Allen Ingram, Env. Eng. Asst.	Division of Water
Jimmy Allen, Board Chairman	Kentucky Water and Wastewater Operators' Association (KWWOA)
Melissa Brothers, Executive Director	Kentucky Water and Wastewater Operators' Association (KWWOA)
Jimmy Keeton	Kentucky Power Company
Ronald Van Stockum	Not listed

Submitted oral or written comments regarding the administrative regulation:

<u>Name and Title</u>	<u>Affiliation</u>
Ruth Lancaster, Certified Operator	Louisville Water Company
Jimmy Allen, Board Chairman	Kentucky Water and Wastewater Operators' Association (KWWOA)
Nancy Parker, Certified Operator	Henderson Water Utility
Gary Larimore, Executive Director	Kentucky Rural Water Association (KRWA)
Annette C. DuPont-Ewing, Executive Director	Kentucky Municipal Utilities Association (KMUA)

William R. Scalf, Jr., PE, Director  
Emily Harkenrider, Analyst

Frankfort Sewer Department  
Legislative Research Commission

**III** The following people from the promulgating administrative body responded to written comments:

Name and Title

Aaron Keatley, Director

Julia Kays, Branch Manager

Affiliation

Division of Compliance Assistance

Division of Compliance Assistance

**IV Summary of Comments and Responses for 401 KAR 11:001**

**(1) Subject Matter: Certified Operator definition**

**(a) Commenter: Ruth Lancaster**

**Comment:** What is an active certificate? Does this include retired operators, who were formerly classified differently than the actively employed? Does it simply mean a current certificate?

**(b) Response:** A certified operator is an individual who holds an active license in good standing. The agency has historically used the word active to mean “in effect or current” as opposed to expired, terminated, or suspended. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Nancy Parker**

**Comment:** This is going to cause confusion. The word “active” should either be changed to “current” or “currently active”.

**(d) Response:** A certified operator is an individual who holds an active license in good standing. The agency has historically used the word active to mean “in effect or current” as opposed to expired, terminated, or suspended. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Jimmy Allen**

**Comment:** KWWOA believes that this definition is not specific enough and should be expanded to include notation of primary responsibility and the need to meet all requirements of the new Chapter 11 regulations.

**(f) Response:** The cabinet agrees that all individuals with primary responsibility for a wastewater treatment plant or collection system are required to be certified. However, not all individuals who become certified have primary responsibility for the wastewater treatment plant or collection system. Certified operators are required to meet all requirements set forth in 401 KAR Chapter 11. No change will be made to this administrative regulation regarding this comment.

**(2) Subject Matter: Operator definition**

**(a) Commenter: Nancy Parker**

**Comment:** This means that anyone who is even remotely involved in the operation of a wastewater treatment plant must be considered an operator. Does this

include maintenance personnel and others that may have a role to be considered “operators”? This will add to confusion and pay conflicts within the system. Generally, the persons in the collection system are not considered to be an “operator” the same as the plant operator. Does this mean that the distribution personnel will have to be certified as a plant operations person and vice versa? If so, that will mean all these persons will have to hold an maintain CEU hours for both licenses. This is going to put a hardship on the systems to not only pay for these licenses and hours but to continue work while these persons are away at training and testing.

**(b) Response:** Historically, the cabinet has defined both operator and certified operator. The agency decided to clearly define both definitions as opposed to eliminating one definition and creating confusion. Only individuals identified in 401 KAR 11:030 are required to be certified. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Jimmy Allen**

**Comment:** KWWOA questions the need for this particular definition and reference throughout the regulation to “operator”. The majority of facilities do not consider an individual to be an “operator” unless the individual is actually “certified”. Therefore, if reference throughout the regulation is to “certified operator” rather than “operator” it would seem that this definition would not be necessary.

**(d) Response:** Historically, the cabinet has defined both operator and certified operator. The agency decided to clearly define both definitions as opposed to eliminating one definition and creating confusion. No change will be made to this administrative regulation regarding this comment.

**(3) Subject Matter: Primary Responsibility definition**

**(a) Commenter: Nancy Parker**

**Comment:** If the person is in responsible charge does this mean that person has to be “on site” or performing the tasks or does it mean that the person “in responsible charge” just has to supervise? If he/she has to only supervise, can they do so from a remote location that is “off site”?

**(b) Response:** This administrative regulation does not address whether the person with primary responsibility must be on site; however, 401 KAR 5:010 requires that a certified operator with primary responsibility be reasonably available. No change will be made to this administrative regulation regarding this comment.

**(4) Subject Matter: Core Content definition**

**(a) Commenter: Jimmy Allen**

**Comment:** As an entity that provides continuing education for Kentucky’s operators, KWWOA would like assurance that this “core content” is clearly defined. Previous discussions regarding what training should be considered as “process control” related have created confusion and often made it difficult for a training provider to ensure operators receive quality training. KWWOA strongly encourages that items such as safety training, managerial types of training, pumps and motor maintenance, etc. all be included in the “core content” types of items considered. KWWOA would welcome the opportunity to review and comment on the “core content” items considered.

**(b) Response:** The Kentucky Board of Certification of Wastewater System Operators will be responsible for proposing core content, in open meetings. The agency will be relying heavily on the core content outlined in the Association of Boards of Certification's Need-To-Know Criteria. These core criteria do include safety, management, and equipment maintenance, as well as other topics. No change will be made to this administrative regulation regarding this comment.

**(5) Subject Matter: Operator in Training definition**

**(a) Commenter: Gary Larimore**

**Comment:** This section has definitions for "certified operator" and "operator". For better clarification, "operator in training" should also be defined.

**(b) Response:** An Operator in Training designation is a subset of a Class I certification; therefore, an Operator in Training is a certified operator. No change will be made to this administrative regulation regarding this comment.

**(6) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**Summary of Comments and Responses for 401 KAR 11:010**

**(1) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**Summary of Comments and Responses for 401 KAR 11:020**

**(1) Subject Matter: Integrity of sample collection, preparation, and analysis**

**(a) Commenter: Ruth Lancaster**

**Comment:** Does this mean that only certified operators are permitted to collect samples? If so, does this apply only to samples used to determine compliance – or samples used strictly for process control, also? If it is the intent of this regulation to require that only certified personnel collect samples, this will create a hardship for many systems particularly larger systems. There is already a shortage of Class IV operators in some areas of the state. Would the person collecting samples have to be certified to the level of the specific water system, or would any certification at any level be acceptable?

If this statement does not set the requirement that all sample collectors be certified, then to what extent is the certified operator being held responsible for the actions of third party samplers (other system employees, contract laboratories, etc.)? I believe that substantial review and clarification of this statement is necessary.

**(b) Response:** The cabinet agrees that this language could be confusing. The cabinet will modify this requirement to clarify that a certified operator is responsible only for samples the certified operator has collected.

**(c) Commenter: Nancy Parker**

**Comment:** Again does this mean that all distribution works will have to be certified operators too? Or does this mean the plant operator will have to take responsibility for someone else's work?

**(d) Response:** These proposed regulations establish standards for certified wastewater treatment plant and collection system operators. The cabinet agrees that this language could be confusing. The cabinet will modify this requirement to state that a certified operator is only responsible for samples the certified operator has collected.

**(e) Commenter: Jimmy Allen**

**Comment:** KWWOA does question subsection (e) which indicates that a certified operator shall ensure the integrity of sample collection, preparation, and analysis so that results are a true representation of water quality. Is this stipulation meant to imply that a certified operator must sign the DMR to the Division of Water which contains information regarding sample results? Also, often the certified operator of a facility is not the individual actually collecting samples and analysis may be performed by a third party independent laboratory. To what degree is the certified operator "responsible" for the actions of a third party in this respect? This subsection may require further thought and/or clarification.

**(f) Response:** The cabinet agrees that this language could be confusing. The cabinet will modify this requirement to state that a certified operator is responsible only for samples that the certified operator has collected. This standard does not require the certified operator to sign the Discharge Monitoring Report (DMR).

**(g) Commenter: Gary Larimore**

**Comment:** There needs to be more clarification on the intent of this statement. Is it intended to require only certified operators to collect all samples? Or is the intent to put the certified operator on notice that the certified operator is ultimately responsible for any failure in the sample collection, preparation, documentation and analysis process? Many utilities are not equipped or have sufficient staff to perform the ever increasing analysis requirements. Most utilities use contract labs for these purposes. A certified operator should not be held "solely" responsible for sample collection, preparation, and analysis procedures performed by "third party" groups. The proposed regulation should recognize current business practices. All contract labs performing analysis for water and/or wastewater utilities should be accredited and follow state approved procedures.

**(h) Response:** The cabinet agrees that this language could be confusing. The cabinet will modify this requirement to state that a certified operators are responsible for only activities where they are personally involved.

**(2) Subject Matter: Certified operator’s judgment**

**(a) Commenter: Nancy Parker**

**Comment:** This is incomplete. Does this mean that the employer must be informed verbally or in writing or what? Anyone can say they verbally informed the employer, and the employer can deny being told. If the “certified operator” tells the employer and the employer ignores him/her or tells them to do what they are told anyway – then what? You do not specify that any other action s needed. Are they supposed to shrug their shoulders and go on at that point or are they supposed to report it to the Division of Water or just note it? This needs more specific language and instruction because I don’t know of any operator that will not face this at some point especially in some systems.

**(b) Response:** The cabinet believes that it is the responsibility of the certified operator to use their judgment to determine if the situation warrants notifying their employer verbally, in writing, or both. An operator should maintain proof that this requirement has been met. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Gary Larimore**

**Comment:** In situations where the safety, health, and welfare of the public or the environment are endangered, a certified operator should inform the employer. The concern is to what degree the cabinet will enforce this requirement. Will the cabinet accept statements from the certified operator that verbal notification was provided to the employer or will the certified operator be required to provide written notification to the employer? A certified operator may be hesitant to provide written notification if such action would jeopardize employment.

**(d) Response:** The cabinet believes that it is the responsibility of the certified operator to use their judgment to determine if the situation warrants notifying their employer verbally, in writing, or both. An operator should maintain proof that this requirement has been met. No change will be made to this administrative regulation regarding this comment.

**(3) Subject Matter: Display of operator certificate**

**(a) Commenter: Jimmy Allen**

**Comment:** We would suggest the addition of a section requiring display of the operator(s) certificate identical to the one included in 401 KAR 5:010 (Section 4) which reads “Certificate Display. If a wastewater system office is available at the wastewater treatment plant or within the sewer service area, the operator’s certificate shall be prominently displayed on the wall. The completion of the certification process and passing of the examination by an operator is a source of pride and certificate display is a means of recognizing that accomplishment.

**(b) Response:** The proposed revisions to 401 KAR 5:010 require that a facility display the operator’s certificate. No change will be made to this administrative regulation regarding this comment.

**(4) Subject Matter: General Comments**

**(a) Commenter: Jimmy Allen**

**Comment:** KWWOA commends the Division of Compliance Assistance for the expansion of regulatory language regarding operator professionalism. This type of standard is long overdue in a profession often not recognized for its contribution to public health, safety, and protection of the environment. The expansion of this regulatory language will only further the professionalism of certified operators.

**(b) Response:** The agency thanks you for your comment.

**(5) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**Summary of Comments and Responses for 401 KAR 11:030**

**(1) Subject Matter: Education and Experience substitutions**

**(a) Commenter: Annette C. DuPont-Ewing**

**Comment:** The cabinet suggests that education may be substituted for up to fifty percent of the experienced requirement with a two year associate's degree. An associate's degree does not contribute to a candidate's knowledge base or ability to operate a system, especially if the associate's degrees in a non-related field. If the associate's degree is to be considered a meaningful substitution for experience it should be in a related field such as engineering, chemistry, biology, microbiology, etc. In other words, only a science based degree should be considered as a substitute for experience.

**(b) Response:** The cabinet agrees that the substitution language should be revised to require that education substituted for experience must be in an environmental science-related discipline.

**(c) Commenter: Ruth Lancaster**

**Comment:** Is the word treatment missing, here, in front of 'experience' ,, or?

**(d) Response:** The cabinet agrees and will make the necessary change to Section 2(3)(b)2. "...collection system experience may substitute for education".

**(e) Commenter: William R. Scalf**

**Comment:** I believe education should replace the word experience in line 17.

**(f) Response:** The cabinet agrees and will make the necessary change to Section 2(3)(b)2.

**(g) Commenter: Jimmy Allen**

**Comment:** KWWOA believes that the wording in this statement is incorrect and should say "may be substituted for one (1) year of education".

**(h) Response:** The cabinet agrees and will make the necessary change to Section 2(3)(b)2.

**(i) Commenter: Gary Larimore**

**Comment:** There appears to be an error in the following sentence “four (4) years of collection system experience may substitute for one (1) year of experience.”

**(j) Response:** The cabinet agrees and will make the necessary change to Section 2(3)(b)2.

**(k) Commenter: Jimmy Allen**

**Comment:** We strongly believe that this substitution clause is excessive. It would require someone without a college degree to have 21 years of experience to qualify for a Class IV collection system certification. KWWOA would suggest two years of collection experience as equivalent to one year of education.

**(l) Response:** The cabinet agrees with the commenter that a change is necessary. It is the cabinet’s intention to substitute one year of collection experience for one year of education. The cabinet also intended in paragraph (c)1 to substitute four years of collection experience for one year of treatment experience. The cabinet will modify this regulation to make the necessary changes.

**(2) Subject Matter: Contact Hours**

**(a) Commenter: Annette C. DuPont-Ewing**

**Comment:** The cabinet suggests that a substitution for experience of ten contact hours, 1 CEU or one post secondary education hour with a passing grade is equal to 0.022 year of experience. This appears to be a comparison of apples and oranges. For example, ten contact hours at a seminar or conference - where attendance is not scrutinized closely and no grade is required - is not the equivalent to a taking a class or completing a quarter at Transylvania University or completion of a class or semester at the University of Kentucky.

**(b) Response:** While the cabinet recognizes there could be vast differences in formal and informal education, the formula proposed in the administrative regulation is consistent with what agency has applied in the past. No change will be made to this administrative regulation regarding this comment.

**(3) Subject Matter: General Comments**

**(a) Commenter: Annette C. DuPont-Ewing**

**Comment:** This regulation pertains only to wastewater operator certification. Wouldn’t it have been more efficient and economical to address both the water and wastewater operator certification regulations at one time? This final point will conclude our comments, other than a “heads up” meeting when the regulations were NOT available in writing so that stakeholders could be aware that new proposed regulations were to be presented, the response time allowed for comment and discussion of these proposed regulations seems compressed and rushed. Normally, a task force is put in place for discussion and working through an issue such as this. This discussion opportunity between the stakeholders and the Cabinet was missing from the process.

**(b) Response:** The cabinet agrees that it would have been preferable to address both the water and wastewater operator certifications regulations at one time; however there



were limited resources available to perform such a task. Discussions regarding possible revisions to the wastewater regulations began long ago. At the time, these discussions involved several stakeholders. In the more recent discussions, the cabinet did involve the Kentucky Board of Certification of Wastewater System Operators which is made up of representatives from the operator profession. The cabinet also considered information that had been presented during previous stakeholder group meetings.

**(c) Commenter: Gary Larimore**

**Comment:** KRWAA has had feedback regarding the need for a “Grandfather Clause” as it relates to the collection systems operator certification. Has the Cabinet considered this concept? It was suggested that an operator should be granted (grandfathered) a collection certification if that individual can demonstrate that they have been working in the collection system the equivalent years for certification prior to the promulgation of this regulation. An operator would be granted certification for their current system only. If they move or become employed by another system they would be required to take a certification exam. Continuing education requirements would apply to all “grandfathered” operators.

**(d) Response:** Because the basis for acquiring a certification is successfully passing an examination and not having a specified amount of experience, the cabinet does not agree that grandfathering individuals as proposed is appropriate. No change will be made to this administrative regulation regarding this comment.

**(4) Subject Matter: Limited certifications**

**(a) Commenter: Ruth Lancaster**

**Comment:** The word ‘school’ should be removed and this certification should be expanded to include other very small and/or seasonal systems such as parks, highway rest stops, restaurants, youth camps, golf courses, mobile home parks serving less than 15 residences, etc. As written, the regulation will require these very small entities to have a certified treatment AND a certified collection operator – creating additional expense and hardship for the owner/operators of these entities without a commensurate increase in public or environmental protection.

**(b) Response:** KRS 224.73-110 states that any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency. A limited certificate of competency is not transferable to any other sewage system. The cabinet has decided that small facilities other than schools should not be operated by an operator with a limited certification. In fact, a documented history of significant levels of noncompliance at small systems makes it urgent that operators of these systems demonstrate they are fully capable of operating these systems in accordance with environmental standards. The cabinet has proposed an operator in training designation for Class I operators to help ensure that individuals can become certified though still demonstrating competency. 401 KAR 5:010 does not require that collection systems of less than 5,000 linear feet be operated by a certified collection system operator. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Nancy Parker**

**Comment:** There is almost certainly more instances where this would apply other than schools. What about trailer parks, campgrounds, etc.? This needs to be reworded to include other possible areas that this certification type would apply to.

**(d) Response:** KRS 224.73-110 requires that any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency. A limited certificate of competency is not transferable to any other sewage system. The cabinet has decided that small facilities other than schools should not be operated by an operator with a limited certification. In fact, a documented history of significant levels of noncompliance at small systems makes it urgent that operators of these systems demonstrate they are fully capable of operating these systems in accordance with environmental standards. The cabinet has proposed an Operator in Training designation for Class I operators to help ensure that individuals can become certified though still demonstrating competency. 401 KAR 5:010 does not require collection systems of less than 5,000 linear feet be operated by a certified collection system operator. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Gary Larimore**

**Comment:** KRWA realizes that KRS 224.73-110(5) indicates that a limited certificate is exclusively for schools. However, we believe that operators of other very small and or seasonal sewage systems should have the same consideration (camp grounds, youth camps, etc.). In the future, as technology advances, there may be an increasing number of rural homes, developments and businesses that may have alternative wastewater treatment systems installed that have limited discharge and need DOW approval. Don't lose your flexibility. Consider using similar language that is located in the current water operator regulations. KRWA would be open to such a law change.

**(f) Response:** KRS 224.73-110 requires that any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency. A limited certificate of competency is not transferable to any other sewage system. The cabinet has decided that small facilities other than schools should not be operated by an operator with a limited certification. In fact, a documented history of significant levels of noncompliance at small systems makes it urgent that operators of these systems demonstrate they are fully capable of operating these systems in accordance with environmental standards. The cabinet has proposed an Operator in Training designation for Class I operators to help ensure that individuals can become certified though still demonstrating competency. 401 KAR 5:010 does not require that collection systems of less than 5,000 linear feet be operated by a certified collection system operator. No change will be made to this administrative regulation regarding this comment.

**(5) Subject Matter: Operator in training**

**(a) Commenter: Ruth Lancaster**

**Comment:** Is it intended that the OIT be working under the supervision of a certified operator? I missed that statement if it is in here.

**(b) Response:** The cabinet is not requiring that an operator in training work under the direct supervision of another certified operator. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Jimmy Allen**

**Comment:** KWWOA is not opposed to the inclusion of an “Operator in Training” designation at the Class I level. However, we do not believe that an individual who has no experience working in a wastewater treatment plant should be in primary responsibility of the plant regardless of size or characteristics without the supervision of a properly certified Class I or higher operator. We strongly recommend that this wording be changed to require that the “Operator in Training” be supervised by a properly certified operator and that the properly certified operator be required to verify that the “Operator in Training” has met the requirements to receive their Class I wastewater treatment certification upon completion of the experience requirement.

In addition, this regulation indicates that the operator may be in responsible charge of a Class I facility. However, 401 KAR 5:010 revisions indicate as follows: “A treatment plant with a design capacity of less than or equal to 50,000 gallons per day shall be operated by a certified operator holding an active Class I, II, III, or IV treatment certificate.” No reference is made in this revision to indicate that an Operator in Training may operate the Class I system. It would seem from review that these two regulations conflict with one another.

**(d) Response:** The cabinet does not propose that an Operator in Training work under the direct supervision of another certified operator. A Class I certified operator with an Operator in Training designation is a Class I operator because they have passed a Class I examination. As a result, they may operate a Class I system. The Operator in Training designation establishes limitations on how the certification can be renewed, not what duties the operator can perform. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Gary Larimore**

**Comment:** The proposed language requires that an individual may have to work at a utility for several years before being allowed to take an exam to become a certified operator. An operator should be allowed to take an examination for whichever class they desire after completing a minimum of thirty (30) days of acceptable operation of a utility system. The issuance of the certification would not be made until the operator completed the experience requirement for the classification he would be seeking. In the case of an upgrade from a lower classification to a higher classification there would not be reason to take another examination. We should be providing incentives for operators to advance

and learn. The current structure can be viewed as a deterrent or disincentive for advancement.

For example: A new employee takes an examination for a Class III operator certification after working in a Class III treatment plant for 30 days. They would then be issued an Operator in Training certification. After completion of one (1) year of acceptable operation of the treatment plant the operator would notify the Division of Compliance Assistance which would issue a Class I certification. After two (2) years of acceptable operation the employee would notify the Division and the certification would be upgraded to a Class II certification. After three (3) years of acceptable operation the certification would be upgraded to a Class III certification. The requirement that a minimum of one (1) year of that experience be the operation of a Class II or higher plant could remain as current regulations require.

With this suggested change a new employee would have the incentive to learn more in the early stages of employment. Utilities would benefit by knowing an employee's potential soon after employment and could begin to offer increased compensation at an earlier date. The employee or the utility would have the responsibility of maintaining records and notifying the Division of Compliance Assistance whenever the employee completed the required experience for each classification. The only difference between the current requirements and this example is the time of the exam. All experience requirements and documentation would still be the responsibility of the operator.

**(f) Response:** The cabinet has proposed an Operator in Training designation for a Class I certification only. This is an incentive to attract individuals into the profession. The cabinet is not inclined at this time to offer the Operator in Training designation to any other classification level. The cabinet will give consideration to expanding the Operator in Training designation to other certification levels after we have evaluated the benefit or success of the Operator in Training provisions as proposed.

**(6) Subject Matter: Education and experience requirements**

**(a) Commenter: Ruth Lancaster**

**Comment:** As written, this will prevent persons under the age of 27 (at a minimum) from acquiring a Class IV license if they pursue the generally accepted schedule of 4 years of full time college and 5 years employment in a wastewater plant immediately following graduation. As we are all aware, it is common for students to take even longer than 4 years to finalize their degree, and employment in a wastewater system does not always begin immediately following graduation, further extending the time period for qualification. In actuality, this regulation as written may be construed as limiting Class IV certification to persons older than 28, 29, 30. Given the nationwide trends of aging in the operator population, and forecasted trends in retirement in upcoming years, this regulation as written will exacerbate the operator shortages expected to reach critical proportions in the next 5-10 years. Five years of experience seems unduly burdensome, and I respectfully submit that the period be shortened to 3 years (a time frame utilized by several other states).

**(b) Response:** The proposed regulation does not change the experience requirements for wastewater treatment certifications. These standards have been successfully applied and the agency does not have any data to suggest they need to be modified at this time. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Ruth Lancaster**

**Comment:** The term ‘allied sciences’ is not well defined, and has created controversy in interpretation in the drinking water regulation for some years. Suggested revision: strike the word “allied”. The entire question of restricting degrees to certain ‘appropriate’ ones for the purposes of qualification for certification is a difficult one: There are engineering degrees in robotics, aeronautics, packaging, quality, project management, etc. Are all of them equally applicable to qualification? Would a degree not classified as ‘science’ (management, mathematics, electronics) be less helpful in the operation of a wastewater plant than some of the ‘science’ degrees such as geology, astronomy, physics?

Suggested: eliminate subject area of degree, or reword to address number of college hours in math, science, etc., versus actual name of degree if a specific level of science or mathematics education is considered to be necessary.

Suggested: eliminate the term ‘standard curriculum’ or clearly define what is meant by this.

**(d) Response:** The cabinet agrees that “allied” sciences and “standard curriculum” are terms not well defined; therefore the cabinet will revise the regulation to remove the terms “allied” and “standard curriculum”.

**(e) Commenter: Nancy Parker**

**Comment:** The education requirements need to be reworded. There are many types of engineering degrees that would not have anything to do with a natural science at all and it is not fair to include those persons as eligible. Also the word “allied” is going to cause some issues in definition and many people who have a degree (or even course content) that does apply to the field may end up not being able to count their education towards a license.

Also we need to think about the fact that a lot of utilities can not afford to hire college educated people to be wastewater treatment plant operators nor can they afford to wait 8 years before a new hire can obtain a class IV license. That seems to be too restrictive. I realize that there is a lot to learn and a lot of responsibility but 8 years just seems like too much time.

**(f) Response:** The cabinet agrees that “allied” sciences and “standard curriculum” are terms not well defined; therefore the cabinet will revise the regulation to remove the terms “allied” and “standard curriculum”. The proposed regulation does not change the experience requirements for wastewater treatment certifications. These standards have been successfully applied and the agency does not have any data to suggest they need to be modified at this time.

**(7) Subject Matter: Industrial facilities with collection systems**

**(a) Commenter: Ruth Lancaster**

**Comment:** Will industrial facilities with collection systems be required to have collection system operators? Will this determination be based upon whether their facilities treat sanitary as well as industrial waste – or not? Will this determination be based upon whether the industrial facility has a KPDES discharge permit directly to a receiving stream, or whether they pre-treat before discharge to a POTW? There are a number of facilities in the state which treat industrial process waste and/or sanitary waste for direct discharge to the Ohio River or other receiving streams.

**(b) Response:** KRS 224.73-110 requires that 401 KAR 5:010 define which facilities shall be operated under the primary responsibility of a certified operator under 401 KAR Chapter 11. As proposed, 401 KAR 5:010 requires that plants and collection systems that accept wastewater containing domestic sewage be operated by a certified operator.

**(8) Subject Matter: Entities who withdraw water for cooling water**

**(a) Commenter: Ruth Lancaster**

**Comment:** Will this regulation apply to entities who withdraw water only for cooling water use but who have a KPDES permit for the return of that cooling water to the environment?

**(b) Response:** KRS 224.73-110 requires that 401 KAR 5:010 define which facilities shall be operated under the primary responsibility of a certified operator under 401 KAR Chapter 11. As proposed, 401 KAR 5:010 requires that plants and collection systems that accept wastewater containing domestic sewage be operator by a certified operator.

**(9) Subject Matter: Homeowners with on-site treatment systems**

**(a) Commenter: Ruth Lancaster**

**Comment:** Will this regulation apply to homeowners with on-site treatment systems? If so, will they be considered to have a collection system and therefore be required to obtain collection system certification?

**(b) Response:** The regulation does apply to homeowners. Homeowners with on-site treatment systems must be operated by a certified Class I treatment operator. 401 KAR 5:010 does not require that collection systems with less than 5,000 linear feet be operated by a certified operator in primary responsibility. No change will be made to this administrative regulation regarding this comment.

**(10) Subject Matter: Classification of wastewater collection certification by population**

**(a) Commenter: William R. Scalf**

**Comment:** The Frankfort Sewer Department operates a Class IV WWTP, but the proposed regulations would limit my Collection Operators to Class III Certification because we have a population of less than 50,000 individuals. As the regulations are currently written, FSD collection cannot get their Class IV Certification without going to a larger collection system to gain appropriate experience. Another alternative would

be to allow a Collection Operator to take a higher classification test with additional years of experience. My concern is that the regulation, as written, limits my staff in professional advancement.

**(b) Response:** The cabinet will be changing the classification of collection system operators in the regulation from population served to the size of the plant receiving the waste.

**(c) Commenter: Jimmy Allen**

**Comment:** The actual classification of wastewater collection systems is identified in 401 KAR 5:010 and the Division of Water propose to utilize linear feet of line and population served. KWWOA has recommended to the Division of Water that they reconsider whether this is the appropriate method for determining collection system classifications and has suggested consideration of characteristics of waste stream and collection system flow. (A copy of the comments to the Division of Water is attached for your consideration). Another discrepancy between the two regulations appears to be that the Chapter 5 revisions determine classification based on linear feet of line and population but the certification levels in 401 KAR 11:030 only reference population figures. No reference to linear feet of line is made in this regulation.

**(d) Response:** The cabinet will be changing the classification of collection system operators in the regulation from population served to the size of the plant receiving the waste. 401 KAR 5:010 requires that a collection system with more the 5,000 linear feet be operated by a certified operator in primary responsibility. This is a facility standard, not a certification standard, which is why it is not addressed in 401 KAR Chapter 11.

**(e) Commenter: Gary Larimore**

**Comment:** The operator “treatment” certifications are based upon treatment plants with a “design capacity” of gallons per day. The operator “collection system” certifications are based upon population served, but also state that a collection operator shall not have primary responsibility for a wastewater collection system with a larger “design capacity.” Design capacity of a collection system should not be a factor if the various collection certifications are based upon “population served.” The following language modification is suggested:

(2) Wastewater Collection Certifications. (a) Class I Collection certification - A Class I Collection operator may have primary responsibility for a wastewater collection system serving a population of less than or equal to 1,500 individuals. A Class I Collection operator shall not have primary responsibility for a wastewater collection system ~~with~~ serving a larger design capacity population.

(Similar language modifications should be made for each class of Collection certification.)

**(f) Response:** The cabinet will be changing the classification of collection system operators in the regulation from population served to the size of the plant receiving the waste. 401 KAR 5:010 requires that a collection system with more the 5,000 linear feet be operated by a certified operator in primary responsibility. This is a facility standard, not a certification standard, which is why it is not addressed in 401 KAR Chapter 11.

**(g) Commenter: Annette C. DuPont-Ewing**

**Comment:** KMUA does not agree with or understand why the Energy and Environment Cabinet has tied Operator Certification to population – or “Tiering” on pages 1, 2 3 and 11. The size of the treatment and collection process is closely dependent upon the population of the community. No reasonable connection or rationale can be drawn between the population of a city and the need for qualified, certified personnel that are capable of operating a system. Whether a community has a population of 5,000 or 125,000 citizens is immaterial. The operator should be certified and should have the basic skills needed to perform the job function of wastewater treatment. The operator certification should not be based upon the size of the population served. A fully qualified operator that has received certification based on state standards and testing should be able to operate in a small city as well as a large city, if he or she has been properly trained.

**(h) Response:** The cabinet will be changing the classification of collection system operators in the regulation from population served to the size of the plant receiving the waste. 401 KAR 5:010 requires that a collection system with more than 5,000 linear feet be operated by a certified operator in primary responsibility. This is a facility standard, not a certification standard, which is why it is not addressed in 401 KAR Chapter 11.

**(11) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**Summary of Comments and Responses for 401 KAR 11:050**

**(1) Subject Matter: Duration of certification**

**(a) Commenter: Ruth Lancaster**

**Comment:** This appears to apply to both Drinking Water and Wastewater certifications. Is it intended to?

**(b) Response:** This regulation is only related to wastewater certifications. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Gary Larimore**

**Comment:** Special consideration should be given to the renewal of certifications held by Operators in Training. An Operator in Training with less than the required one year of experience on June 30 of an odd year would not be eligible to upgrade to a Class I certification during the normal renewal period for other operators. Paragraph (2) above does not specify the length of time for an Operator in Training certificate. Since an Operator in Training certificate may be issued during any month the certificate should be valid for a minimum of two (2) years to allow time to obtain the experience and training hours necessary to advance to a Class I certification. Furthermore, when an Operator in Training has completed the required one year of experience and training hours their cost to upgrade to a Class I certified operator should be without penalties or late fees.



**(d) Response:** All certifications shall expire on June 30 of odd-numbered years unless suspended, revoked, or replaced by a higher classification certificate before that date. This includes the Operator in Training designation. The cabinet would like to note that a change will be made to the regulation to allow certificates issued between January 1 and June 30 of an odd-numbered year will include the next two (2) year renewal period. The cabinet does not agree that late fees should not apply to operators in training.

**(2) Subject Matter: Hours earned prior to certification**

**(a) Commenter: Ruth Lancaster**

**Comment:** This places an undue hardship upon persons who become certified slightly more than 6 months before the renewal date. For example, a person passing the Class IV exam on December 1 has 7 months to accumulate 24 hours of continuing education credit. Past practice has been to permit operators to utilize any hours earned during the prior renewal period (including attendance at a certification school culminating in the administration of a certification examination.). As written, no prior hours (including the attendance at certification school) would be able to be utilized for renewal.

**(b) Response:** The cabinet believes that continuing education is intended to increase or refresh an operator's knowledge after they have passed the certification examination. Therefore, the cabinet decided to only consider continuing education hours earned after initial certification. Individuals who upgrade their certification can use hours earned prior to the upgrade. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Nancy Parker**

**Comment:** This places an undue hardship upon persons who become certified then cannot count the hours that they accrued in preparation for the test. Past practice has been to permit operators to utilize any hours earned during the prior renewal period (including attendance at a certification school culminating in the administration of a certification examination.). As written, no prior hours (including the attendance at certification school) would be able to be utilized for renewal. I feel that the class to prepare the individual for the test also provided valuable information for that individual as an operator too and we should not discourage the individuals testing from attending those classes. If left as it is written there will be more utilities that will not send the people to the certification schools because the hours they accumulate will not be any good for renewal and thus deemed to be expensive and as a result valuable information will not reach the individuals as it is now.

**(d) Response:** The cabinet believes that continuing education is intended to increase or refresh an operator's knowledge after they have passed the certification examination. Therefore, the cabinet decided to only consider continuing education hours earned after initial certification. Individuals who upgrade their certification can use hours earned prior to the upgrade. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Jimmy Allen**

**Comment:** KWWOA is concerned with this wording. It is so broad based that an individual who attends a DCA sponsored certification school and earns 18 hours of training and tests on the last day, and passes that test would not be able to utilize the training earned in that school for renewal of their newly earned certification during their next renewal period because the certification is not earned until the date that the exam is actually passed. It would seem that DCA would not wish to discourage participation in their certification review sessions and this wording could have that effect. KWWOA strongly encourages DCA to reconsider this statement.

**(f) Response:** The cabinet believes that continuing education is intended to increase or refresh an operator's knowledge after they have passed the certification examination. Therefore, the cabinet decided to only consider continuing education hours earned after initial certification. Individuals who upgrade their certification can use hours earned prior to the upgrade. No change will be made to this administrative regulation regarding this comment.

**(3) Subject Matter: Expiration of continuing education hours**

**(a) Commenter: Ruth Lancaster**

**Comment:** As a water operator, a wastewater operator, and a former employee of the certification section, it is my opinion that this method of calculating expiration of hours is complicated and burdensome for the operator and for the state certification staff. It also introduces a variability factor so that hours earned at a given class (say, one held March 15 2007) are usable for an operator who sends his renewal in February 2009, but not for the operator who sat next to him in the class who does not mail his renewal until April 2009. It is much simpler and leads to fewer operator renewal problems if all classes earned during a specific renewal cycle 'expire' at the end of that cycle and cannot be carried over past June 30<sup>th</sup>. I respectfully submit that this method be used to 'age out' operator renewal hours.

**(b) Response:** The cabinet appreciates your concerns; however, this requirement is established in KRS 224.73-110. The cabinet does not have the authority to modify a statute by regulation. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Nancy Parker**

**Comment:** This is confusing and introduces a variability factor so that hours earned at a given class are only eligible toward your renewal based on the date you turn in your forms and fees to the state. It is much simpler and leads to fewer operator renewal problems if all classes earned during a specific renewal cycle 'expire' at the end of that cycle and cannot be carried over past June 30<sup>th</sup>. This would be much simpler for all involved and would be a lot less confusing or time consuming.

**(d) Response:** The cabinet appreciates your concerns; however, this requirement is established in KRS 224.73-110. The cabinet does not have the authority to modify a statute by regulation. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Ruth Lancaster**

**Comment:** As the industry moves toward greater implementation of on-line courses and continues the use of correspondence courses such as the California State Sacramento texts, I agree with the premise that periodic review of courses is needed to determine if they are still applicable. The two year time period is too short, however, and should be extended to 5 years. Otherwise, each system in the state will have to resubmit any correspondence or on-line courses utilized every renewal period, resulting in a greater paperwork burden on the systems, the certified operators, the DCA staff and the Boards of Certification.

**(f) Response:** The cabinet believes two (2) years is appropriate. The expiration date may be extended if the training provider requests the extension in writing; and the training has not changed from the previous approval. No change will be made to this administrative regulation regarding this comment.

**(g) Commenter: Gary Larimore**

**Comment:** The policy of “training hours shall expire two years from the date earned” has caused operators to lose training hours even though they attempted to renew prior to June 30 of odd-numbered years. The original policy as stated KRS 224.73- 110 (7) “training hours accumulated in any given year in excess of the minimum requirement necessary for renewal may be carried forward for a period not to exceed two (2) years” caused confusion as well. The current policy used for renewal of water certifications as stated in the Chapter 8 water regulations causes less confusion and prevents loss of hours during a renewal period. KRWA would be supportive of the necessary legislative changes needed to KRS.73-110 (7) to provide consistency between the water and wastewater regulations and eliminate further confusion.

The following language modification is suggested: Prior to applying for certification renewal, a certified operator shall complete the required number of cabinet-approved training hours. Hours earned prior to certification shall not count toward certification renewal. Training hours shall expire two years from the date earned. The requisite training shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date.

**(h) Response:** The cabinet appreciates your concerns; however, this requirement is established in KRS 224.73-110. The cabinet does not have the authority to modify a statute by regulation. The cabinet would be acceptable to a statutory change. No change will be made to this administrative regulation regarding this comment.

**(4) Subject Matter: Disciplinary Actions**

**(a) Commenter: Ruth Lancaster**

**Comment:** Please clarify if the operator must re-test after any suspension lasting more than 2 years. Will the certificate expire during the suspension? Will the operator be required to obtain continuing education hours during the suspension?

**(b) Response:** A certified operator whose certification is suspended will not be required to retake the examination if they have accumulated the required training hours;

submitted a completed Application for Certification Renewal form and the renewal fee as outlined in 401 KAR 11:050. The certified operator's suspended certificate will remain suspended after renewal until the suspension period is expired. No change will be made to this administrative regulation regarding this comment.

**(5) Subject Matter: Incorporated by reference**

**(a) Commenter: Ruth Lancaster**

**Comment:** Should minor revisions be made to these forms (for example, an address change if DCA relocates), this would technically require a change of this regulation to update the publication date of the revised forms. Suggestion: incorporate some language to include 'current published versions' of these forms to eliminate future problems.

**(b) Response:** KRS 13A requires the title and edition date be included for materials incorporated by reference. The cabinet does not have the flexibility to include this type of language. No change will be made to this administrative regulation regarding this comment.

**(6) Subject Matter: General comments**

**(a) Commenter: Gary Larimore**

**Comment:** The following language is suggested to be added as paragraph (c) to Section 3 (5): Certified operators holding separate treatment and collection certificates shall complete the training hours for recertification required for only the highest certificate in lieu of the continuing education requirements specified for both certificates.

**(b) Response:** The cabinet agrees with this recommendation; therefore, a change will be made to this administrative regulation regarding this comment.

**(7) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**Summary of Comments and Responses for 401 KAR 11:060**

**(1) Subject Matter: Certification application fee**

**(a) Commenter: Ruth Lancaster**

**Comment:** As written, this is NOT the fee for training or testing; it is a fee for application. Currently there is no fee for an application, simply a \$35 fee for testing or a \$125 fee for a school and test. The fee for application review should be minimal - \$20 if any is assessed at all. Fees should be structured so that application fees and testing fees are included together as every application (with the exception of reciprocity) will require a test.

**(b) Response:** The \$100 certification application fee includes the cost for administrative processing, testing materials, examination, and testing facilities. The

administrative regulation does not establish an application fee separate from an examination fee. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Jimmy Allen**

**Comment:** KWWOA believes that clarification of the “Certification Application” fee is needed. Is this fee in fact the fee to only review an application or is this the same as previously described in the regulation as “Examination” fee and includes the administration of the examination. We would suggest that this terminology be revisited.

**d) Response:** The \$100 certification application fee includes the cost for administrative processing, testing materials, examination, and testing facilities. The administrative regulation does not establish an application fee separate from an examination fee. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Gary Larimore**

**Comment:** Does the certification application fee of \$100 include the certification training, all materials, and the exam. If so, in the event an operator fails the exam, will that operator have to pay the full \$100 fee to re-exam?

**(f) Response:** The \$100 certification application fee includes the cost for administrative processing, testing materials, examination, and testing facilities. The administrative regulation does not establish an application fee separate from an examination fee. This fee does not include the certification training. If an examinee fails the examination, the examinee would be required to submit a new application and fee in order to retake the examination.

**(2) Subject Matter: Operator training fees**

**(a) Commenter: Ruth Lancaster**

**Comment:** What limits are proposed for these fees?

**(b) Response:** The cabinet did not propose training fees in this administrative regulation. The cabinet will set training fees annually considering input from the board. No change will be made to this administrative regulation regarding this comment.

**(3) Subject Matter: Refundable fees**

**(a) Commenter: Ruth Lancaster**

**Comment:** The fees in subsection (1) of this section are nonrefundable. Fifty percent (50%) of the fees in subsection (2) of this section are refundable if registration is canceled at least two (2) business days prior to the beginning of the training event. Does not address substitution of attendees – is it intended to?

**(b) Response:** It is not intended to address the substitution of attendees. The applicant may cancel their registration or they may reschedule for a different course date. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Gary Larimore**

**Comment:** The “nonrefundable” policy is inappropriate, especially to operators seeking reciprocity. It is less likely for the operators in Kentucky seeking certification or renewal to request a refund. Their certification or renewal is based upon passing an exam and/or obtaining sufficient training hours. However, those seeking reciprocity are dependant upon the decisions of the cabinet. If there is a high fee for reciprocity and no refunds if reciprocity is denied then this nonrefundable policy becomes a deterrent. Suggested: Non-refundable reciprocity fee \$75, or \$100 reciprocity fee with 50% refunded if denied.

**(d) Response:** The reciprocity fee was increased to cover the administrative costs associated with processing a reciprocity application. These applications must be reviewed by administrative staff, technical staff and by the Kentucky Board of Certification of Wastewater System Operators. A comprehensive review must be completed and the regulations from the state in which the applicant is certified must be examined for comparison to the Kentucky administrative regulations. An individual seeking reciprocity has the option of submitting a certification application and, if approved, taking the appropriate examination. Reciprocity fees are currently non-refundable. No change will be made to this administrative regulation regarding this comment.

**(4) Subject Matter: Renewal fees**

**(a) Commenter: Ruth Lancaster**

**Comment:** The notion of providing a discount for transactions that do not require the time of customer service employees is not a new one (see the banking industry). \$50 per transaction seems excessive for the time required of Cabinet employees, particularly when this burden will fall primarily upon the very small systems which do not have internet access. Suggested revision: \$50 if renewed on line, \$60 if sent into the office.

**(b) Response:** The renewal fee is based on administrative costs associated with processing a renewal application. When a certified operator renews their certification through the cabinet Web site, the administrative costs are much less. The cabinet wants to pass on the savings of this method to the certified operator. Not all systems and operators have individual internet access; however, internet access is available at most local libraries. A certified operator may also access the internet for the purpose of renewing their certification through the Web site at the Department for Environmental Protection’s regional offices. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Nancy Parker**

**Comment:** Since most systems that will not renew through the website are most likely small and may not have web access the fee for not renewing on-line seems too high. You also need to consider those systems that require the individual to pay for their licenses.

**(d) Response:** The renewal fee is based on administrative costs associated with processing a renewal application. When a certified operator renews their certification

through the cabinet Web site, the administrative costs are much less. The cabinet wants to pass on the savings of this method to the certified operator. While not all systems and operators may personally have internet access, internet access is available at most local libraries. Certified operators may also access the internet for the purpose of renewing their certification through the Web site at the Department for Environmental Protection's regional offices. No change will be made to this administrative regulation regarding this comment.

**(e) Commenter: Jimmy Allen**

**Comment:** KWWOA would suggest that in order to assist systems who do not maintain credit cards, the agency consider including the ability to pay renewals online via e-check. Various systems throughout the state are not allowed to utilize credit cards and would then have to pay the increased renewal fee for operators because they would be unable to renew online. Inclusion of e-check as a means of payment would alleviate this problem and likely increase the number of online renewals the agency receives.

**(f) Response:** Thank you for your suggestion. The cabinet will evaluate the inclusion of e-check as a means of payment.

**(g) Commenter: Gary Larimore**

**Comment:** Suggested revision for the renewal fee: \$50 if renewed on line, \$60 if renewed by mail.

**(h) Response:** The renewal fee is based on administrative costs associated with processing a renewal application. When a certified operator renews their certification through the cabinet Web site, the administrative costs are much less. The cabinet wants to pass on the savings of this method to the certified operator. No change will be made to this administrative regulation regarding this comment.

**(5) Subject Matter: Renewal late fees**

**(a) Commenter: Ruth Lancaster**

**Comment:** Renewal late fee: \$250. Unduly burdensome, and is not structured in the same way as the previous example. It is possible to renew a late renewal on line, therefore the fees should be tiered accordingly. A flat late fee of \$50, (\$100 total if renewed on line or \$110 if renewed by mail) would be more appropriate.

**(b) Response:** The late renewal late fee is not established to cover the administrative costs associated with processing the renewal application, but to encourage applicants to renew their certification on time. If an operator does not renew their certification on time, their facility may be in violation. In addition, the certified operator may not be in primary responsible charge of a facility if their certification is expired. The renewal cycle allows an operator to renew their certification up to 6 months before expiring. There is a high percentage of certified operators renewing their certification late. The certified operator does have the option to retest instead of paying the late renewal fee. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Gary Larimore**

**Comment:** The renewal late fee of \$250 is excessive. Although the intent of the higher fee may be to force operators to renew in a timely manner there are situations that may prevent this such as illness or injury. Suggested Revision: A flat fee of \$50 could be added to the above suggestion (\$100 website renewal, \$110 if renewed by mail)

**(d) Response:** The late renewal late fee is not established to cover the administrative costs associated with processing the renewal application, but to encourage applicants to renew their certification on time. If an operator does not renew their certification on time, their facility may be in violation. In addition, the certified operator may not be in primary responsible charge of a facility if their certification is expired. The renewal cycle allows an operator to renew their certification up to 6 months before expiring. There is a high percentage of certified operators renewing their certification late. The certified operator does have the option to retest instead of paying the late renewal fee. No change will be made to this administrative regulation regarding this comment.

**(6) Subject Matter: Reciprocity fees**

**(a) Commenter: Ruth Lancaster**

**Comment:** Reciprocity fee: \$500. Unduly burdensome and not in line with reciprocity fees for other hands-on professions governed by state boards such as plumbing, etc. This is comparable to reciprocity fees for lawyers and doctors: water and wastewater operators are not at the same income level, and should not be burdened with such an exorbitant fee. – particularly when none of the fee is refundable if reciprocity is denied per this reg. A good-faith applicant has no way of accurately predicting the results of a reciprocity review, and should therefore not be forced to gamble with an excessively high fee. Suggested: Non-refundable reciprocity fee \$75, or \$100 reciprocity fee with 50% refunded if denied.

**(b) Response:** The reciprocity fee is increased to cover the administrative costs associated with processing a reciprocity application. These applications must be reviewed by administrative staff, technical staff and by the Kentucky Board of Certification of Wastewater System Operators. A comprehensive review must be completed and the regulations from the state in which the applicant is certified must be examined for comparison to the Kentucky administrative regulations. An individual seeking reciprocity has the option of submitting a certification application and the appropriate fee and, if approved, may take the appropriate examination. Reciprocity fees are currently non-refundable. No change will be made to this administrative regulation regarding this comment.

**(c) Commenter: Gary Larimore**

**Comment:** The reciprocity fee of \$500 is excessive. Although the intent of the higher fee may be to force operators from other states to bypass the reciprocity process and take an exam this is a potential deterrent to an operator. If the state from which an operator is wishing to transfer from has had adequate testing and experience requirements then Kentucky should accept the operators' certification without any addition testing requirements or excessive fees. The reciprocity fee should be set at the same level as the



certification fee. At the same time there should not be any deterrent to cause a qualified individual from relocating from another state.

**(d) Response:** The reciprocity fee is increased to cover the administrative costs associated with processing a reciprocity application. These applications must be reviewed by administrative staff, technical staff and by the Kentucky Board of Certification of Wastewater System Operators. A comprehensive review must be completed and the regulations from the state in which the applicant is certified must be examined for comparison to the Kentucky administrative regulations. Individuals seeking reciprocity have the option of submitting a certification application and the appropriate fee and, if approved, may take the appropriate examination. Reciprocity fees are currently non-refundable. No change will be made to this administrative regulation regarding this comment.

**(7) Subject Matter: General comments**

**(a) Commenter: Jimmy Allen**

**Comment:** KWWOA has reviewed the new fee schedule proposed. While the fees are significantly higher than those previously included in regulation, KWWOA is aware that it has been quite some time since fees have been raised and recognizes the need for increases in order to maintain the program. Therefore, KWWOA is not opposed to the fee increases at this time. However, KWWOA is also aware that the Operator Certification Program is currently being faced with retirements, and potential retirements of staff. In the past, budgetary issues have forced the Operator Certification Program into a position where staff vacancies could not be filled and forced a decrease in services offered to operators such as the number of training courses offered. With a dramatic increase in fees, KWWOA would like to have assurance that the Operator Certification Program will receive management support to fill vacancies and continue to offer the same level of service. KWWOA would not support an increase in fees with less service provided. The fees generated by these increases should be utilized for the sole purpose of maintaining and/or improving the certification program. Operators and systems should not be asked to bear the brunt of budgetary issues in other portions of the Department and/or Cabinet.

**(b) Response:** Thank you for your support. Fees generated by the proposed increase will be used to maintain the level of service currently offered by the Operator Certification Program. It is not the intent of the program to use these fees to offset budgetary issues in other portions of the department or cabinet.

**(c) Commenter: Jimmy Allen**

**Comment:** KWWOA would like to express our appreciation to the Division of Compliance Assistance in allowing us the opportunity to offer public comment on these regulatory changes. As an organization comprised of the individuals whose profession is governed by these regulations, we hope the Division will recognize our desire to ensure that these changes meet the needs of Kentucky's wastewater systems, operators, and protect human health and the environment. Our organization supports and encourages the efforts of the Operator Certification Program and believes that the Operator Certification Section is the appropriate entity to be providing certification review and

testing. After all, who better to provide the interpretation and regulatory perspective in an effort to educate Kentucky's wastewater professionals than the regulator? Should you have questions or need further information, please feel free to contact Melissa Brothers, Executive Director of KWWOA at (502) 226-8149 or via email at roywbrothers@fewpb.net. KWWOA is always willing to work with the Division to ensure that regulatory issues are an appropriate representation of the needs of the system, operator, customers, and environment that we all strive to protect and serve.

**(d) Response:** Thank you for your support.

**(e) Commenter: Gary Larimore**

**Comment:** Some of the proposed fees are excessive and may be a deterrent to the industry. At a time when there are concerns about having enough skilled and qualified individuals to operate the utilities there should not be additional burdens placed upon the existing operators.

**(f) Response:** These fees are established to cover administrative costs associated with implementing the program. Prior to proposing these fees, the cabinet evaluated the fees in surrounding states and believes the fees proposed are appropriate.

**(8) Subject Matter: Drafting corrections**

**(a) Commenter: Emily Harkenrider (Legislative Research Commission)**

**Comment:** Ms. Harkenrider suggested several technical drafting corrections.

**(b) Response:** The cabinet agrees and has made the suggested changes.

**V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body**

**401 KAR 11:001. Definitions for 401 KAR Chapter 11.** Comments were considered and the following changes are suggested:

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 9**

After "the certification of", insert "wastewater".

**Line 10**

After "the certification of", insert "wastewater".

**Page 1**

**Section 1**

**Lines 11 and 12**

After "Section 1.", insert "Definitions.".

Delete the following:

The following terms shall have the meanings set forth below unless the context clearly indicates otherwise:

**Page 1**

**Section 1(3)**

**Line 16**

After ""Cabinet"", insert the following:

is defined by KRS 224.01-010(9)

Delete the remainder of subsection (3) except the period.

**Page 1**

**Section 1(4)**

**Line 18**

After "operator classification as", insert "established".

Delete "set".

**Page 2**

**Section 1(7)**

**Line 1**

After ""Operator" means", insert "a".

Delete "any".

**401 KAR 11:010. Board of Certification.** Comments were considered and the following changes are suggested:

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 9**

After "the certification of", insert "wastewater".

**Page 1**

**Section 1(4)**

**Line 20**

After "to certified operators.", insert "During the evaluation of".

Delete "When evaluating".

**Page 2**

**Section 1(6)**

**Line 9**

After "denial of the application", insert "based on the criteria in 401 KAR 11:050 Section 1(8)".

**401 KAR 11:020. Standards of professional conduct for certified operators.** Comments were considered and the following changes are suggested:

**Page 1**

**Title**

**Line 5**

After "Standards of", insert "professional conduct for certified operators".  
Delete "Professional Conduct for Certified Operators".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 9**

After "the certification of", insert "wastewater".

**Line 10**

After "performance of certified", insert "wastewater".

**Page 1**

**Section 1(1)**

**Line 14**

After "with this Chapter", insert a colon.  
Delete the period.

**Page 1**

**Section 1(1)(c)**

**Line 19**

After "employer under circumstances", insert "in which".  
Delete "where".

**Page 2**

**Section 1(1)(e)**

**Lines 3 and 4**

After "ensure the integrity of", insert "the samples that he collects, prepares, or analyzes".  
Delete "sample collection, preparation, or analysis".  
After "so that results", insert "shall be".  
Delete "are".

**401 KAR 11:030. Wastewater treatment and collection operators; classification and qualification.** Comments were considered and the following changes are suggested:

**Page 1**

**Title**

**Line 5 and 6**

After "Wastewater", insert "treatment and collection system operators; classification and qualifications".  
Delete "Treatment and Collection Operators – Classification and Qualification".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 10**

After "the certification of", insert "wastewater".

**Page 1**

**Section 1(1)(a)**

**Line 15**

After "Limited certification", insert a period.  
Delete the hyphen.

**Page 1**

**Section 1(1)(b)**

**Line 18**

After "I Treatment certification", insert ".1.".  
Delete the hyphen.

**Line 20 and 21**

After "gallons per day.", insert "2.".

**Page 2**

**Section 1(1)(c)**

**Line 1**

After "in Training designation", insert ".1.".  
Delete the hyphen.

**Line 3**

After "gallons per day.", insert "2.".

**Page 2**

**Section 1(1)(d)**

**Line 6**

After "II Treatment certification", insert ".1.".  
Delete the hyphen.

**Line 8**

After "gallons per day.", insert "2.".

**Page 2**

**Section 1(1)(e)**

**Line 10**

After "III Treatment certification", insert ".1.".  
Delete the hyphen.

**Line 12**

After "gallons per day.", insert "2.".

**Page 2**

**Section 1(1)(f)**

**Line 14**

After "IV Treatment certification", insert a period.

Delete the hyphen.

**Page 2**

**Section 1(2)**

**Line 16**

After "(2) Wastewater", insert "collection certifications".

Delete "Collection Certifications".

**Page 2**

**Section 1(2)(a)**

**Line 16**

After "I Collection certification", insert ".1.".

Delete the hyphen.

**Page 2**

**Section 1(2)(a)**

**Lines 17 and 18**

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.".

Delete "serving a population of less than or equal to 1,500 individuals".

**Line 18**

After "1,500 individuals.", insert "2.".

**Page 2**

**Section 1(2)(a)**

**Line 19**

After "collection system", insert "that transports wastewater to a treatment plant".

**Page 2**

**Section 1(2)(b)**

**Line 20**

After "in Training designation", insert ".1.".

Delete the hyphen.

**Line 22**

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per day.".

Delete "serving a population of less than or equal to 1,500 individuals".

**Page 3**

**Section 1(2)(b) and (b) (should be (c))**

**Lines 1 and 2**

After "larger design capacity.", insert "(c)".

Delete "(b)".

**Page 3**

**Section 1(2)(b) (should be (c))**

**Line 2**

After "II Collection certification", insert ".1.".

Delete the hyphen.

**Lines 3 and 4**

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to two (2) million gallons per day.".

Delete "serving a population of less than or equal to 15,000 individuals.".

After "15,000 individuals.", insert "2.".

**Line 5**

After "wastewater collection system", insert "that transports wastewater to a treatment plant".

**Page 3**

**Section 1(2)(b) (should be (c)) and (c) (should be (d))**

**Lines 5 and 6**

After "larger design capacity.", insert "(d)".

Delete "(c)".

**Page 3**

**Section 1(2)(c) (should be (d))**

**Line 6**

After "III Collection certification", insert ".1.".

Delete the hyphen.

**Line 7**

After "collection system serving", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (7 ½) million gallons per day.".

Delete "a population of less than or equal to 50,000 individuals.".

**Line 8**

After "50,000 individuals.", insert "2.".

**Line 9**

After "collection system", insert "that transports wastewater to a treatment plant".

**Page 3**

**Section 1(2)(c) (should be (d)) and (d) (should be (e))**

**Lines 9 and 10**

After "larger design capacity.", insert "(e)".

Delete "(d)".

**Page 3**

**Section 1(2)(d) (should be (e))**

**Line 10**

After "IV Collection certification", insert a period.

Delete the hyphen.

**Lines 10 and 11**

After "primary responsibility of", insert "any".

Delete "a".

After "wastewater collection system", delete "of any design capacity".

**Page 3**

**Section 2**

**Line 12**

After "Experience, Education", insert a comma.

**Line 15**

After "in 401 KAR", insert "11:050".

Delete "11:040".

**Page 3**

**Section 2(1)(a)1.**

**Line 19**

After "Education.", insert "A".

Delete "No".

After "level of education", insert "shall not be".

Delete "is".

**Page 3**

**Section 2(1)(a)2.**

**Line 20**

After "Experience.", insert "A".

Delete "No".

After "level of experience", insert "shall not be".

Delete "is".

**Page 3**

**Section 2(1)(b)1.**

**Line 22**

After "Education.", insert "A".



After "(GED) certificate", insert "shall be required".

**Page 3**

**Section 2(1)(b)2.**

**Line 23**

After "wastewater treatment plant", insert "shall be required".

**Page 4**

**Section 2(1)(c)1.**

**Line 2**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required; and".

**Page 4**

**Section 2(1)(c)2.**

**Line 3**

After "Experience.", insert "Experience shall not be".

Delete "No experience is".

**Page 4**

**Section 2(1)(d)1.**

**Line 5**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required".

**Page 4**

**Section 2(1)(d)2.**

**Line 6**

After "wastewater treatment plant", insert "shall be required".

**Page 4**

**Section 2(1)(e)1.**

**Line 8**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required".

**Page 4**

**Section 2(1)(e)2.**

**Line 11**

After "gallons per day", insert "shall be required".

**Page 4**

**Section 2(1)(f)1.**

**Line 13**

After "baccalaureate degree in", delete "a standard curriculum in".

After "engineering", insert "science".

Delete “allied sciences”.

**Page 4**

**Section 2(1)(f)1.**

**Line 14**

After "or equivalent", insert "shall be required".

**Page 4**

**Section 2(1)(f)2.**

**Line 15**

After "wastewater treatment plant", insert "shall be required. a.".

Delete the period.

**Line 17**

After "gallons per day.", insert "b.".

**Line 19**

After "gallons per day", insert "shall be required".

**Page 4**

**Section 2(2)(a)1.**

**Line 23**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required".

**Page 5**

**Section 2(2)(a)2.**

**Line 1**

After "wastewater collection system", insert "shall be required".

**Page 5**

**Section 2(2)(b)1.**

**Line 3**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required; and".

**Page 5**

**Section 2(2)(b)2.**

**Line 4**

After "Experience.", insert "Experience shall not be".

Delete "No experience is".

**Page 5**

**Section 2(2)(c)1.**

**Line 6**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required".

**Page 5**

**Section 2(2)(c)2.**

**Line 7**

After "wastewater collection system", insert "shall be required".

**Page 5**

**Section 2(2)(d)1.**

**Line 9**

After "Education.", insert "A".

After "(GED) certificate", insert "shall be required".

**Page 5**

**Section 2(2)(d)2.**

**Line 12**

After "15,000 individuals", insert "shall be required".

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to two (2) million gallons per day".

Delete "serving a population of less than or equal to 15,000 individuals".

**Page 5**

**Section 2(2)(e)1.**

**Line 14**

After "baccalaureate degree in", delete "a standard curriculum in".

After "engineering", insert "environmental technology; biological, physical, or chemical sciences".

Delete "allied sciences".

**Page 5**

**Section 2(2)(e)1.**

**Line 15**

After "or equivalent", insert "shall be required".

**Page 5**

**Section 2(2)(e)2.**

**Lines 16 and 17**

After "wastewater collection system", insert "shall be required. a.".

Delete the period.

**Lines 17 and 18**

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (7 ½ ) million gallons per day".

Delete "serving a population of less than or equal to 50,000 individuals".

**Line 18**

After "50,000 individuals.", insert "b.".

**Lines 19 and 20**

After "50,000 individuals", insert "shall be required".

After "wastewater collection system", insert "that transports wastewater to a treatment plant with a design capacity of less than or equal to seven and one-half (7 ½ ) million gallons per day".

Delete "serving a population of less than or equal to 50,000 individuals".

**Page 5**

**Section 2(3)**

**Line 21**

After "The cabinet", insert "shall".

Delete "may".

**Page 5**

**Section 2(3)**

**Line 23**

After "Education", insert "in environmental engineering; environmental technology; and biological, physical, or chemical sciences shall".

Delete "may".

**Page 6**

**Section 2(3)(a)1.**

**Line 2**

After "2. A", insert "baccalaureate".

Delete "bachelor".

After "may substitute for", insert "two (2)".

Delete "2".

**Page 6**

**Section 2(3)(a)2.**

**Line 3**

After "may substitute for", insert "four (4)".

Delete "4".

**Page 6**

**Section 2(3)(a)3.**

**Line 4**

After "Education", delete "in environmental engineering, environmental technology, and biological, physical, or chemical sciences".

**Page 6**

**Section 2(3)(b)2.**

**Line 16**

After "2.", insert "One (1) year".

Delete "Four (4) years".

After "one (1) year of", insert "education".

Delete "experience".

**Page 6**

**Section 2(3)(b)3.**

**Line 19**

After "laboratory analysis", insert a comma.

After "collection, treatment", insert a comma.

**Line 20**

After "how much experience", insert "shall".

Delete "will".

**Page 7**

**Section 2(3)(c)1.**

**Line 3**

After "1.", insert "a. Four (4) years".

Delete "One (1) year".

After "system experience", insert "shall".

Delete "may".

**Line 4**

After "of treatment experience.", insert "b. This".

Delete "However, this".

After "substitution", insert "shall".

Delete "may".

**Page 7**

**Section 2(3)(c)2.**

**Line 6**

After "of treatment experience", insert "shall".

Delete "may".

**401 KAR 11:050. Operator certification.** Comments were considered and the following changes are suggested:

**Page 1**

**Title**

**Line 5**

After "Operator", lowercase the first letter of "Certification".

**Page 1**  
**RELATES TO**  
**Line 6**

After "224.10-110,", insert "224.10-420(2)".

**Page 1**  
**NECESSITY, FUNCTION, AND CONFORMITY**  
**Line 9**

After "the certification of", insert "wastewater".

**Page 1**  
**Section 1(2)**  
**Line 15 and 16**

After "(2)", insert "(a)".

After "shall complete the", delete the opening quotation mark.

After "Exams and Training", delete the closing quotation mark.

After "and", delete the opening quotation mark.

**Lines 16 and 17**

After "Documentation Form", delete the following:

" , which are incorporated by reference in Section 5 of this  
administrative regulation

**Line 18**

After "to the cabinet.", insert "(b)".

**Page 1**  
**Section 1(3)**  
**Line 20**

After "(3)", insert "(a)".

**Page 2**  
**Section 1(3)**  
**Line 2**

After "401 KAR 11:030.", insert "(b)".

**Page 2**  
**Section 1(4)**  
**Line 4**

After "(4)", insert "(a)".

**Lines 4 and 5**

After "the applicant of", insert "the applicant's".

Delete "their".

**Line 5**

After "examination score.", insert "(b)".

**Page 2**

**Section 1(5)**

**Line 7**

After "(5)", insert "(a)".

After "a certificate and", insert the following:

a wallet card to an applicant who successfully passes

Delete the following:

wallet card to applicants who successfully pass

**Line 8**

After "the certification examination.", insert "(b)".

**Page 2**

**Section 1(7)**

**Line 13**

After "(7)", insert "(a)".

**Line 14**

After "of the cabinet.", insert "(b)".

**Page 2**

**Section 1(8)(a)**

**Line 18**

After "was issued are", insert "not".

Delete "no".

**Lines 19 and 20**

After "Chapter 224.73-110 and", insert "401 KAR Chapter 11".

Delete "this Chapter".

**Page 2**

**Section 1(8)(b)**

**Line 21**

After "applicant submits an", delete the opening quotation mark.

After "Application for Reciprocity", delete the closing quotation mark.

**Page 2**

**Section 2(1)**

**Line 23**

After "(1)", insert "(a)".

**Page 3**

**Section 2(1)**

**Line 2**

After “before that date.”, insert “(b) Certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.”.

**Page 3**

**Section 2(2)**

**Line 3**

After “(2)”, insert “(a)”.

**Line 5**

After “administrative regulation.”, insert “(b)”.

**Page 3**

**Section 3(1)(b)**

**Line 13**

After “Submitted a completed”, delete the opening quotation mark.  
After “for Certification Renewal”, delete the closing quotation mark.

**Page 3**

**Section 3(2)**

**Line 15**

After “(2)”, insert “(a)”.

**Line 16**

After “the requirements of”, insert “subsection (1)(a) and (b)”.  
Delete “paragraphs (1)(a) and (1)(b)”.

**Lines 17 and 18**

After “of the certification.”, insert “(b)”.  
After “renewal, the operator”, insert “shall not continue to”.  
Delete “will no longer”.

**Page 3**

**Section 3(3)**

**Line 19**

After “(3) If the”, delete the opening quotation mark.  
After “for Certification Renewal”, delete the closing quotation mark.

**Lines 19 and 20**

After “form”, delete the following:  
“,which is incorporated by reference in Section 5 of this  
administrative regulation,



**Page 3**

**Section 3(4)**

**Line 23**

After "(4)", insert "(a)".

After "not be renewed.", insert "(b)".

**Page 4**

**Section 3(5)**

**Line 3**

After "(5)", insert "(a)".

**Line 4**

After "cabinet-approved training hours.", insert "(b) Certified operators holding both treatment and collection certificates shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for both certificates.".

After "required for both certificates.", insert "(c)".

**Line 5**

After "toward certification renewal.", insert "(d)".

After "shall expire two", insert "(2)".

**Page 4**

**Sections 3(5) and 3(5)(a)**

**Lines 5 and 6**

After "the date earned.", insert "1.".

Delete "(a)".

**Page 4**

**Section 3(5)(a) and (b)**

**Lines 7 and 8**

After "of approved training;", insert "or 2.".

Delete "and (b)".

**Page 4**

**Section 3(6)**

**Line 10**

After "(6)", insert "(a)".

**Line 11**

After "cabinet a completed", delete the opening quotation mark.

After "Education Credit", delete the closing quotation mark.

**Page 4**

**Section 3(6) and (7)**

**Lines 12 and 13**

After "form", insert "(b)".

Delete the following:

, which is incorporated by reference in Section 5 of this administrative regulation.

(7)

**Page 4**

**Section 3(7)**

**Line 14**

After "completed", delete the opening quotation mark.

After "Activity Report", delete the closing quotation mark.

**Page 4**

**Section 3(7) and (8)**

**Lines 14 through 16**

After "form", insert "(c)".

Delete the following:

, which is incorporated by reference in Section 5 of this administrative regulation.

(8)

**Page 4**

**Section 3(8) and (9)**

**Lines 17 and 18**

After "as provided in", insert the following:

paragraph (a) of this subsection.

(d)

Delete the following:

subsection (6) of this Section.

(9)

**Page 4**

**Section 3(9) and (10)**

**Lines 19 and 20**

After "actual instruction time.", insert "(7)(a)".

Delete "(10)".

**Page 4**

**Section 3(10)**

**Line 20**

After "shall expire two", insert "(2)".

After "date of approval.", insert "(b)".

**Line 21 and 22**

After “with the board”, insert “shall”.

Delete “may”.

After “expiration date if”, insert “: 1.”.

After “in writing.”, insert “; and 2. the training has not changed from the previous approval.”.

Delete the period after “in writing”.

**Page 5**

**Section 4(1)**

**Line 2**

After "satisfactorily performed", insert "the operator's".

Delete "their".

**Page 5**

**Section 4(2)**

**Line 3**

After “(2)”, insert “(a)”.

**Line 5 and 6**

After “evaluated by the board.”. Delete “If the complaint or violation warrants further investigation, the”.

After “investigation, the”, insert “(b) The”.

After "the certified operator", insert "shall appear before the board if requested by the board".

Delete "may be requested to appear before the board".

**Page 5**

**Section 4(3)**

**Line 8**

After "recommend that", delete "no".

After "disciplinary action", insert "not".

**Line 9**

After “action be taken”

Insert “if the board determines that the certified operator has not satisfactorily performed operator duties in accordance with 401 KAR 11:020.”

**Page 5**

**Section 4(4)**

**Line 10**

After "(4)", insert "(a)".

**Line 11**

After "evidence.", insert "(b)".  
After "review, the cabinet", insert "shall".  
Delete "will".

**Page 5**

**Section 4(5)**

**Line 14**

After "actions may include", delete the following:  
, but are not limited to

**Page 5**

**Section 4(5)(a)**

**Line 15**

After "Probation", insert "of the operator's certification"

**Page 5**

**Section 4(5)(d)**

**Line 19**

After "or criminal penalties", insert the following:  
; or  
(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection

**Page 5**

**Section 4(6)**

**Line 20**

After "certified operator and", insert "the operator's".  
Delete "his".

**Line 22**

After "for which the", insert "disciplinary action".  
Delete "sanction".

**Page 5**

**Section 4(7)**

**Line 23**

After "(7)", insert "(a)".

**Page 6**

**Section 4(7)**

**Line 1**

After "remains in effect.", insert "(b)".

**Page 6**

**Section 4(9) and (10)**

**Lines 4 through 6**

After "(9)", delete the remainder of subsection (9) in its entirety and delete "(10)".

**Page 6**

**Section 4(10) which should be Section 4(9)**

**Line 6**

After "certified operator who", insert "is".  
Delete "considers himself".

**Page 6**

**Section 5**

**Line 8**

After "Section 5.", insert "Incorporation".  
Delete "Documents Incorporated".

**Page 6**

**Section 5(1)(a) through (d)**

**Lines 10, 11, 12, and 13**

After "May 2008", insert a semicolon.

**Page 6**

**Section 5(1)(e)**

**Line 14**

After "May 2008", insert ";and".

**Page 6**

**Section 5(1)(f)**

**Line 15**

After "May 2008", insert a period.

**401 KAR 11:060. Certification fees.** Comments were considered and the following changes are suggested:

**Page 1**

**Title**

**Line 5**

After "Certification", lowercase the first letter of "Fees".

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Line 9**

After "the certification of", insert "wastewater".

**Line 10**

After "fee schedule for", insert " wastewater".  
After "for training of", insert "wastewater".

**Page 1**

**Section 1(1)**

**Line 12**

After "certification of", insert "wastewater".  
After "operators shall", insert "be".  
Delete "not exceed the following".

**Page 1**

**Section 1(1)(b)1.**

**Line 15**

After "1.", Capitalize the first letter of "fifty".  
After "through the cabinet", insert "Web site".  
Delete "Website".

**Page 1**

**Section 1(1)(b)2.**

**Line 16**

After "through the cabinet", insert "Web site".  
Delete "Website".

**Page 1**

**Section 1(3)**

**Line 21**

After "(3)", insert "(a)".  
After "section are nonrefundable.", insert "(b) Fifty (50) percent".  
Delete "Fifty percent (50%)".

**Page 2**

**Section 1(3)**

**Line 2**

After "training event.", insert "(c). The fees in subsection (2) of this section shall be fully refunded if the training event is cancelled by the cabinet."